IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1027 OF 2005
IN
NOTICE OF MOTION NO.2921 OF 2002
IN
SUIT NO.3413 OF 2002

Pradeep Sharma — Appellant
vs.
Shamim Moiz Kaka — Respondent

Mr.U.J.Makhija i/b.Mr.A.K.Singh for the appellants.

Mr.Mudit Sharma i/b.M/s.Desai & Diwanji for the respondent.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 17th January 2006

P.C.

Heard.

2. During the course of motion hearing, Mr.U.J.Makhija, the learned counsel for the appellants submitted that as per the agreement between the parties, the appellant is required to pay a sum of Rs.10,000/- (Rupees ten thousand) every month to the respondent. He submits that the appellant is not averse to the appointment of the Court Receiver but the royalty must not be fixed exceeding Rs.10,000/- every month.

3. The learned counsel for the respondent though submitted that as per the valuation, the royalty must be

fixed at the rate of Rs.13,000/- per month, he did not have serious objection if the royalty was fixed at the rate of Rs.10,000/- per month.

4. It is true that the agreement dated 24th September 1998 is not signed by the plaintiff but it is signed by the plaintiff's husband and there is no specific averment that the plaintiff's husband was acting as a manager of the plaintiff, but the fact is that vide document (Exhibit D at page 112), the appellant-defendant has agreed to pay a sum of Rs.10,000/- for occupation of the subject property.

5. Hence, we dispose of the appeal by the following order:

(i) The impugned order dated 2nd September, 2004 is maintained save and except clause (ii) of the operative order.

(ii) Clause (ii) of the operative order is substituted by the following order:

. "The Court Receiver shall take symbolic possession and shall offer appointment of agent of the Receiver to the defendant on a royalty of Rs.10,000/-

per month with security and other usual terms and conditions."

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)